NZTDT 2021/41

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER	the Education Act 1989
IN THE MATTER	of an inquiry into matters referred by a Complaints Assessment Committee
BETWEEN	**THE COMPLAINTS ASSESSMENT COMMITTEE**
	Referrer
AND	**Cheryl Teunissen**
	Respondent

Decision of the Tribunal on charge liability

Hearing:	13 December 2021, on the papers
Date of Decision:	21 December 2021
Tribunal:	T J Mackenzie (Deputy Chair) N Parsons K Turketo
Counsel:	L R van der Lem for the CAC Respondent self-representing

Introduction

[1] The CAC charges that the respondent has committed serious misconduct, or misconduct, as follows:

> The CAC charges that Cheryl Samantha Teunissen registered teacher, of Motueka, on or about 11 June 2020, during a meeting about an accident she had driving the Centre's van on 10 June 2020, misled the Centre's management as to the fact that she had been convicted for careless driving on 2 June 2020, after colliding with a bicycle while driving on 27 April 2020.

[2] Ms Teunissen has not accepted either charge. The Tribunal has convened to determine the charge and, if proven, any orders that follow.

Facts

[3] The Tribunal has been provided with an agreed summary of facts as follows:

1. The respondent, Cheryl Theunissen, is a registered teacher with an expired provisional practising certificate. She was employed as a relief teacher and van driver at Hardykids Early Learning Centre ("the Centre") from November 2019 until her termination on 17 August 2020, as part of the Centre's response to the matter now before the Tribunal.

2. The respondent became registered in February 2018. Her practising certificate expired in February 2021. During her period of employment with the Centre, the respondent worked under two separate employment agreements - the first as a van driver, and the second as a relief teacher.

Conviction for careless driving

3. On 2 June 2020 the respondent was convicted In the Nelson District Court on a charge of operating a vehicle carelessly, in relation to an incident on 27 April 2020 in which the respondent's vehicle collided with a cyclist at the Intersection of Central and Holdaway Road in Nelson. The cyclist was stationary at the time of the collision, having come to a stop at the intersection in order to turn onto Holdaway Road once the road was clear. She did not suffer any injuries as a result of the collision.

4. On 10 June 2020 the respondent was involved in a car accident whilst driving the Centre's sign-written van in Motueka. As the respondent drove from High Street South around the corner onto Wildman Avenue, she collided with a vehicle which had stopped at the intersection to turn onto Bachelor Ford Road. The collision caused extensive damage to the front-end of the other vehicle.

5. On 11 June 2020 the respondent attended a meeting with Centre management staff to discuss the car accident she had had in the Centre's van the previous day. During that meeting, the respondent was asked by a member of management whether she had been involved in any accidents in the past 5 years. She replied that she had not.

Internal investigation

6. The Centre subsequently learned of the respondent's conviction for careless driving in relation to her driving on 27 April 2020 through a Police vetting report, and invited the respondent to attend a disciplinary meeting to discuss this on 12 August 2020. At that meeting, the respondent advised that she had said that she had not been in any previous accidents because she did not consider her collision with a cyclist in April to be an 'accident', as it did not involve a collision with another vehicle. The respondent apologised and expressed remorse for her actions.

7. On 17 August 2020 the respondent was summarily dismissed from both of her roles at the Centre, for misleading her employer as to the fact that she had been in a prior accident within the last five years.

Teacher's response to the Teaching Council

8. On 7 October 2020 the respondent provided a written response to the mandatory report filed by the Centre. In that response, she noted that she did not consider it appropriate that a mandatory report had been sent to the Teaching Council, as the Centre had investigated her in her capacity as a van driver, rather than in her capacity as a teacher. Further, the respondent advised that she had responded to her accident (and to questions subsequently asked of her during the Centre's investigation) in the way that she had because she was suffering from post-traumatic-stress-disorder.

9. On 6 November 2020 the respondent provided a second written response to the mandatory report. In this response she expressed regret for having failed to meet the standard of professional conduct expected of a teacher. The respondent indicated that she had subsequently sought support from a counsellor in relation to her PTSD, and stressed that she had responded to questions put to her during the Centre's investigation into her second collision because of her PTSD. Further, she advised she would be taking a break from teaching to give herself time to recover.

[4] We have been provided with a letter from the respondent of 8 November 2021, where the respondent expresses her apologies for her behaviour. The respondent states that she should have been truthful, taken responsibility and “not lied”.

[5] We also have a report from the respondent’s counsellor, of 16 August 2020. In that report the counsellor notes that the respondent has received a diagnosis in March 2020, from a clinical psychologist (for ACC), of Post-Traumatic Stress Disorder. The counsellor notes that this can affect functioning when under extreme stress. The counsellor explains that when faced with the stress and potential consequences of her accident that silence would be a common response for someone with PTSD.

Serious misconduct

[6] Section 10 Education and Training Act 2020 defines serious misconduct as follows:

> serious misconduct means conduct by a teacher—
>
> (a) that—
>
> (i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or
> (ii) reflects adversely on the teacher's fitness to be a teacher; or
> (iii) may bring the teaching profession into disrepute; and
>
> (b) that is of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct

[7] In turn, the Teaching Council Rules 2016 at rule 9 establish that the criteria for reporting serious misconduct is where there is reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility. The rule then sets out various examples of what might be a breach of the Code.

[8] Fitness in the section 10 test (10(a)(ii)) has been described as follows:[1]

> We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[9] "Disrepute" (10(a)(iii)) has been considered in the High Court decision of *Collie v Nursing Council of New Zealand.*[2] The Court held that a disrepute test is an objective standard for deciding whether certain behaviour brings discredit to a profession. The question that must be addressed is whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner.

[10] A finding of misconduct (or, misconduct "simpliciter") can be made if one of the above tests in s 10 is established.[3]

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[1] *CAC v Crump* NZTDT 2019-12, 9 April 2020. The references to (b) and (c) are from the equivalent Education Act 1989 provisions, and should now be read as (ii) and (iii).
[2] *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].
[3] *Evans v New Zealand Teachers Disciplinary Tribunal* [2020] NZDC 20062; leave declined in *Evans v Complaints Assessment Committee* [2021] NZCA 66.

[11] Elevation to serious misconduct requires s 10(b) to also be established, as the serious misconduct test is conjunctive. This requires the conduct to be "of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct".

[12] We will consider section 10(a) first and if one of those limbs is made out, go on to consider section 10(b).

Submissions and information from the parties

[13] The CAC submits that the respondent has committed serious misconduct. The CAC says that the respondent misled her employer with the intention of frustrating its investigation into "whether she was a fit person to continue working at the Centre". The CAC says that this level of dishonesty reflects adversely on the respondent's fitness to teach. The CAC describes the behaviour as "affirmatively misleading her employer with the obvious intent to subvert an investigation into her suitability to transport children".

[14] As for disrepute, the CAC likewise says that the conduct of lying to an employer "during investigations into their ability to safely handle students" would likely see a reasonable bystander conclude that the reputation and good standing of the profession was lowered.

[15] The respondent has also provided some information as noted at [4] above. Whilst the respondent has been quite concessionary in that letter, ultimately it is for this Tribunal to determine whether on the facts before us the charges are made out.[4]

Discussion

[16] There are two difficulties with the argument advanced by the CAC. The first is that it may be an overstatement to say that the meeting was "an investigation into (the respondent's) ability to safely handle students" or that it was "an investigation into her suitability to transport children". Whilst the summary of facts discloses that a meeting occurred, it is not clear to us that the meeting was at the level pitched by the CAC. The summary simply discloses that it was a meeting "to discuss the car accident she had had in the Centre's van the previous day".

[17] The second difficulty is that the position of the CAC doesn't take into account the evidence from the respondent's counsellor of why she acted in this way. That evidence, of the reaction from someone that has PTSD, has been admitted to us without issue. We have no reason not to accept it.

[4] *Complaints Assessment Committee v S*, Auckland DC, CIV 2008 004001547, 4 December 2008, at [47].

[18] Once that evidence is considered, the Tribunal is then left in a position that whilst it is plain that the respondent did not disclose her previous incident, we cannot find proven, especially on a papers exercise, that the respondent intended to mislead her employer to the extent suggested.

[19] We would categorise the respondent's actions as misguided and careless. Anything beyond that however is not open to us to make on the evidence before us in this context.

[20] Turning to section 10 then, we do not consider that this conduct, when fully appreciated as above, reflects adversely on the respondent's fitness. Likewise we do not consider that a reasonable person, appraised of all of this, would consider that the profession was brought into disrepute. This is in part because of the PTSD opinion that has been provided to us. Whilst plain dishonesty would often affect fitness and repute, this is not a case as simple as that.

[21] As section 10(a) has not been made out, we dismiss the charge at this point.

[22] As to costs, costs are not awardable to the respondent given she was self-represented. Even if she had incurred costs however, it is likely that no award would be made given the respondent was at fault here and given the approach to costs in professional jurisdictions.[5]

T J Mackenzie
Deputy-Chair

[5] *CAC v McClutchie-Mita* NZTDT 2017 3C.

NOTICE - Right of Appeal under Section 409 of the Education Act 1989

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.

2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.

3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).